

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

BILLIE JOE CHAPMAN,)	CASE NO. 4:07CV3081
)	
Plaintiff,)	
)	MEMORANDUM
v.)	AND ORDER
)	
MICHEAL HOUSTON, Director)	
(N.D.C.S.), et. al.,)	
)	
Defendants.)	

This matter is before the court on the Report and Recommendation of U.S. Bankruptcy Judge Thomas L. Saladino (Filing No. 13), and the plaintiff's motion to dismiss without prejudice, Filing No. 9.

The plaintiff filed his motion to dismiss before any defendant was served. However, the body of that motion stated he had filed for bankruptcy protection. The court therefore referred the case to the bankruptcy court for issuance of a report and recommendation in accordance with Nebraska General Rule 1.5(a)(1), and further ordered the bankruptcy court to address the issue of whether the plaintiff remains obligated to pay his \$350.00 filing fee for filing this action.

The bankruptcy court's report and recommendation explained that a prisoner's obligation to pay filing fees pursuant to 28 U.S.C. § 1915(b) is not dischargeable in bankruptcy. Filing No. 13, p. 2. The report and recommendation concludes:

I respectfully recommend to the United States District Court for the District of Nebraska that it withdraw the reference of this case for further proceedings. Mr. Chapman's debt for the federal court filing fees is not discharged in bankruptcy.

Filing No. 13, p. 2.

The plaintiff has "appealed" this report and recommendation. Construing the plaintiff's filing liberally, he has timely filed an objection to the report and recommendation of the bankruptcy court. The plaintiff claims that under circumstances where the prison is obligated to withdraw and pay the plaintiff's filing fees pursuant to a prisoner payment order, the prison is a creditor in his bankruptcy case. He therefore claims the filing fee debt owed to this court must be discharged in bankruptcy. The plaintiff further states he voluntarily dismissed the case and should not have to pay a filing fee because no one was served with the complaint, the judge did nothing on the case, and no costs were assessed. Filing No. 15, pp. 3-4.

Irrespective of whether any defendant was served, or whether a judge invested time in plaintiff's case, the plaintiff's obligation to pay the filing fee began when he filed the complaint. As stated in this court's previous order:

Pursuant to the Prison Litigation Reform Act, a prisoner plaintiff is required to pay the full amount of the court's \$350.00 filing fee by making monthly payments to the court, even if the prisoner is proceeding IFP. 28 U.S.C. § 1915(b). "[T]he PLRA makes prisoners responsible for their filing fees the moment the prisoner brings a civil action or files an appeal." In re Tyler, 110 F.3d 528, 529-30 (8th Cir. 1997); Jackson v. N.P. Dodge Realty Co., 173 F. Supp.2d 951 (D. Neb. 2001).

See Filing No. 8. As explained in the bankruptcy court's report and recommendation, pursuant to the Prison Litigation Reform Act, this financial obligation remains owed to the court and is not dischargeable in bankruptcy. The plaintiff's objections to the bankruptcy court's report and recommendation lack merit.

The court finds, pursuant to 28 U.S.C. § 157(d) and NEGenR 1.5(b)(2) and for good cause shown, that the Report and Recommendation should be adopted in its entirety.

IT IS THEREFORE ORDERED:

1. The Report and Recommendation of U.S. Bankruptcy Judge Thomas L. Saladino (Filing No. 13) is adopted in its entirety;
2. The referral of this case to the Bankruptcy Court for the District of Nebraska is withdrawn;
3. The plaintiff's motion to dismiss, Filing No. 9, is granted. The above-entitled case and plaintiff's complaint are dismissed without prejudice;
4. The plaintiff remains obligated to pay the filing fee in accordance with this court's prior order, Filing No. 8; and
5. Judgment will be entered in accordance with this Memorandum and Order.

DATED this 8th day of August, 2007.

BY THE COURT:

s/Laurie Smith Camp
United States District Judge